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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

EAGLE VIEW TECHNOLOGIES
INC., PICTOMETRY
INTERNATIONAL CORP.,

Plaintiffs,

vs.

NEARMAP US, INC.,

Defendant.

**PLAINTIFFS' MOTION TO
AMEND PATENT CASE
SCHEDULING ORDER (ECF NO.
99)**

Case No. 2:21-cv-00283-TS-DAO

The Honorable Ted Stewart

Magistrate Judge Daphne A. Oberg

Plaintiffs Eagle View Technologies, Inc., and Pictometry International Corp. (collectively "EagleView") hereby move this Court pursuant to Federal Rule of Civil Procedure 6(b) and DUCivR 7-1(a)(2) for a two-month extension of time for fact discovery, from November 11, 2022, to January 13, 2023, to complete fact discovery regarding matters currently at issue in this case. EagleView also respectfully requests that the Court adjust the remainder of the case schedule by two months to account for Nearmap's scheduling issues and the resulting prejudice to EagleView.

Good cause exists for an extension to the close of fact discovery for the reasons set forth in EagleView's concurrently-filed opposition to Nearmap US, Inc.'s ("Nearmap") "Unopposed" Motion to Amend the Patent Case Scheduling Order to Extend the Time to Take the Depositions of Nearmap's Corporate Witnesses (ECF No. 127) ("Opposition"), which are incorporated herein by reference. In short, additional time is needed because (i) Nearmap is unable to make its corporate witnesses available for deposition in the US before the current close of fact discovery (including one witness who resides in Seattle); (ii) Nearmap is unable to take the depositions of certain of EagleView's witnesses during the current fact discovery period due to Nearmap's counsel's unavailability; and (iii) the parties may need additional time to address issues presented in those depositions (such as lack of preparation and/or other potential witnesses or documents identified in the depositions). The parties have been working together for weeks to schedule depositions and complete remaining discovery in a timely manner, but there can be no real dispute at this point that a two-month extension of fact discovery for both parties is necessary and warranted.¹

¹ EagleView also notes for the Court that the schedule may need to be further adjusted depending on the outcome of the parties' currently filed and forthcoming motions. Specifically, Nearmap has a pending motion to add an affirmative defense (ECF No. 101), which, if granted, may result in the need for additional discovery. EagleView has also notified Nearmap that it intends to file a motion for leave to amend the complaint, which, if granted, will likely require additional discovery and further extensions to the schedule. However, based on what is currently operative in the case, the only need for an extension that EagleView is presently aware is for the reasons set forth herein and in EagleView's Opposition. Contrary to Nearmap's assertion (ECF. No. 130 at 4), EagleView does not intend for an extension to allow either party to seek discovery for matters that are not currently at issue in the case.

Good cause also exists to amend the remainder of the case schedule.² As further set forth in EagleView's Opposition, the current schedule is untenable given that (i) Nearmap has proposed EagleView depose several of Nearmap's corporate witnesses the same week Responsive Claim Construction briefs are due, and (ii) Nearmap has only offered certain of its technical witnesses for deposition *after* the deadline to submit EagleView's Responsive Claim Construction brief.³ Given that significant fact discovery will not take place until mid-December, it would be very difficult for the parties to comply with the remaining deadlines as currently set, including but not limited to the claim construction and related dispositive motion deadlines that pass before all of the depositions take place. In light of these issues, EagleView proposes that the Court extend the remaining case deadlines by two months as follows:

Event	Current Deadline	Proposed Deadline
Discovery Limitations		
Close of fact discovery before claim construction [LPR 1.3(a)]	November 11, 2022	January 13, 2023
Disclosure of intent to rely on opinions of counsel and materials in support [LPR 1.3(b)]	7 days after claim construction ruling	No change
Deadline to file motion for additional discovery [LPR 1.3(b)]	14 days after claim construction ruling	No change

² An adjustment in the remainder of the case schedule was not previously discussed between the parties, however, given the difficulty in having any reasonable discussion with Nearmap when it comes to dates and scheduling that works for both parties, EagleView requests that the Court consider entering the dates that EagleView has proposed (or some reasonable adjustment thereto) to avoid further disputes.

³ EagleView currently has no terms to propose—the “Responsive Claim Construction” brief will therefore be substantially more burdensome on EagleView than Nearmap.

Amendment of Pleadings/Adding Parties		
Last day to file motion to amend pleadings	November 18, 2022	January 17, 2023
Last day to file motion to add parties	November 18, 2022	January 17, 2023
Claim Construction Process		
Parties file Cross-Motions for Claim Construction and Joint Appendix [LPR 4.2(a) & (b)]	November 22, 2022	January 23, 2023
Parties file Simultaneous Responsive Claim Construction Briefs [LPR 4.2(c)]	December 13, 2022	February 10, 2023
Joint Claim Construction Chart & Joint Status Report Due [LPR 4.2(f)]	December 20, 2022	February 17, 2023
Tutorial for Court [LPR 4.4]	January 13, 2023 7 days before claim construction hearing	March 11, 2023
Parties exchange exhibits [LPR 4.3]	7 days before claim construction hearing	No change
Claim Construction Hearing ⁴ [LPR 4.3]	TBD	No change
Expert Discovery		
Parties bearing burden of proof [LPR 5.1(b)]	28 days after claim construction ruling	No change
Counter reports [LPR 5.1(c)]	56 days after claim construction ruling	No change
Close of expert discovery [LPR 5.2]	91 days after claim construction ruling	No change
Dispositive Motions		

Deadline to file dispositive motions required to be filed with claim construction [LPR 6.2]	November 22, 2022	January 23, 2023
Deadline to file opposition to dispositive motions filed with claim construction [LPR 6.2, DUCivR 56-1, 7-1]	December 23, 2022	February 21, 2023
Deadline to file reply to dispositive motions filed with claim construction [LPR 6.2, DUCivR 56-1, 7-1]	January 6, 2023	March 7, 2023
Deadline for filing partial or complete motions to exclude expert testimony	105 days after claim construction ruling	No change
Deadline for filing dispositive or potentially dispositive motions [LPR 6.1]	119 days after claim construction ruling	No change

Accordingly, for the reasons set forth herein and in EagleView's contemporaneously-filed Opposition, EagleView respectfully requests that this Court grant an extension to the close of fact discovery until January 13, 2023. EagleView also respectfully requests that this Court adjust the remaining case schedule as proposed herein.

Dated: November 1, 2022

/s/ Juliette P. White

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*Attorneys for Plaintiffs Eagle View
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International Corp.*

CERTIFICATE OF SERVICE

I hereby certify that, on the 1st day of November 2022, I caused to be electronically filed and served the foregoing PLAINTIFFS' MOTION TO AMEND PATENT CASE SCHEDULING ORDER (ECF NO. 99) with the Clerk of the Court using the Court's electronic filing system, which sent notification of such filing to all attorneys listed on the docket.

/s/ Juliette P. White

Juliette P. White

Attorney for Plaintiffs